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Governor

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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Water Rights

JERRY D. OLDS  
State Engineer/Division Director

September 4, 2008

Re: Response to comments regarding John Swasey's position as water commissioner

#### TO THE DUCHESNE / STRAWBERRY WATER USERS

There were several issues raised during the 2008 Annual Distribution Meeting for the Duchesne / Strawberry Distribution System regarding John Swasey's performance as water commissioner. Enough concern was expressed that the State Engineer requested that any water user who wished to comment on Mr. Swasey's performance should do so in writing by April 20, 2008.

We received 19 letters from various water users, individuals, companies and other entities. The comments ranged through the full spectrum of appreciation and support for John's efforts to recommending that he be replaced as water commissioner.

We have carefully and deliberately reviewed and considered each of the comments and we truly appreciate all those who took the time to express their feelings on this important issue. These comments will be kept in the strictest confidence.

Section 73-5-1(4)(a) of the Utah Code and R655-14-7(13)(a) of the Administrative Procedures for Distribution Systems and Water Commissioners grant the State Engineer authority to remove a water commissioner for cause. "For cause" means reasons that law and Division policy recognize as sufficiently affecting the ability and fitness of the commissioner to perform his duties. According to law and Division policy, reasons that would warrant removal include malfeasance or neglect regarding the measurement, distribution, and regulation of water.

None of the comments we received addressed issues or concerns that would indicate Mr. Swasey is neglectful or guilty of malfeasance in his duty as water commissioner regarding the measurement, distribution, or regulation of water on the Duchesne/Strawberry Rivers Distribution System. Based on our review, there is no cause for removing Mr. Swasey as the water commissioner.

However, the comments received did raise issues that are of concern to the State Engineer. These concerns centered on Mr. Swasey's demeanor and relationship with water users in his official capacity as water commissioner. Certainly, as a representative of the State Engineer, a water commissioner should treat water users with respect and work towards adequate and effective communication. These skills help to ensure there are no misunderstandings regarding water regulation and distribution. We have discussed this situation and these concerns with Mr. Swasey and we are confident improvements will be made.

Mr. Swasey also expressed some of the challenges he faces in communicating distribution and regulation information to the water users. We would remind



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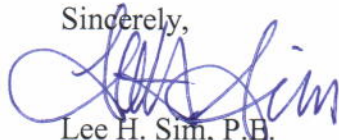
water users that effective communication always requires an effort by both parties. We would encourage all parties to do their part to create an atmosphere where water distribution and regulation can be accomplished according to the water rights and with as little misunderstanding as possible.

Several of the comments centered on Mr. Swasey's activities as a private citizen, outside of his duties and responsibilities as a water commissioner. Certainly Mr. Swasey's role as a water commissioner should not limit his ability to act as a private citizen. However, we have advised him to be aware of the influence he carries in any water related setting because of the appointment he has as a water commissioner.

I hope this letter is clear regarding the State Engineer's position on these issues. We believe Mr. Swasey is doing a very good job in regards to the measurement, regulation, distribution, and reporting of water use on the Duchesne / Strawberry Distribution System. We recognize there is room for improvement in his communication skills and techniques and have discussed with him changes that could be made. We do not feel there is cause to remove him as water commissioner.

If you have any questions regarding this letter or our review of this situation, please contact me by phone at 801-538-7380 or by e-mail at [LeeSim@utah.gov](mailto:LeeSim@utah.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee H. Sim".

Lee H. Sim, P.E.

Assistant State Engineer for Field Services

cc: Jerry Olds, State Engineer  
Bob Leake, Regional Engineer  
Mike Silva, Distribution Engineer  
John Swasey, Water Commissioner